

JOHN A. TIERNEY

FEBRUARY 27, 1958.—Committed to the Committee of the Whole House and
ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 9109]

The Committee on the Judiciary, to whom was referred the bill (H. R. 9109) for the relief of John A. Tierney, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve John A. Tierney of Bethesda, Md., of all liability to refund \$1,116 representing payments of a per diem allowance in lieu of subsistence paid him for the period from October 27, 1952, through February 28, 1953.

STATEMENT

In 1952 Mr. John A. Tierney was an employee of the Department of State assigned to the Office of the High Commission for Germany at Bonn as a budget officer. On September 2, 1952, the Office of the High Commission issued a travel order authorizing Mr. Tierney's separation travel to his home in Helenwood, Tenn. Mr. Tierney was to travel via Washington, D. C., so that he might have 5 days for consultation in the Capital.

After Mr. Tierney arrived in Washington on October 5, 1952, his travel orders were amended to authorize 60 days' leave without pay. A need for his services developed in the Technical Cooperation Administration so that his orders were again amended to place him on a temporary duty status, effective October 27, 1952, for 120 days. He remained in that status till February 28, 1953. On March 2, 1953, he was reassigned as a departmental employee in Washington, D. C.

This is a case where Mr. Tierney's travel to his home in Helenwood, Tenn. was interrupted by his being placed on temporary duty in

Washington, D. C. As is brought out in the report of the Department of State on the bill, the fact that Mr. Tierney was later employed by the TCA for duty in Washington, D. C., was coincidental rather than deliberate. It is clear that he had not proceeded to his home for separation purposes because his travel order had subsequently been amended to provide leave without pay and restoration to temporary duty status. This is further substantiated by the fact that Mr. Tierney's wife proceeded to Helenwood, Tenn., shortly after Mr. Tierney arrived in the United States from Germany. Despite all of this Mr. Tierney's vouchers for per diem allowance were disallowed for the period from October 27, 1952, through February 28, 1953 on the grounds that he was not away from his post of assignment during the period, and because it concluded that he had entered on duty in his departmental assignment on October 27, 1952 rather than on March 2, 1953.

This committee has carefully considered the circumstances of this matter and has concluded that it is only just to grant Mr. Tierney the relief provided for in H. R. 9109. As is pointed out in the departmental report, that although Mr. Tierney did terminate his services in Bonn on September 2, 1952, he did not end his duty status. That status would not have terminated until he reached his destination. The facts which resulted in his travel to his home have been outlined above, and this committee feels that those facts clearly spell out a case for legislative relief. Accordingly the committee agrees with the favorable recommendation of the Department of State and recommends that the bill be considered favorably.

DEPARTMENT OF STATE,
Washington, December 23, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: In your letter of August 5, 1957, to which an interim reply was sent on August 6 you enclosed copies of H. R. 9109, a bill for the relief of John A. Tierney, and requested a report of the facts of the case together with the Department's opinion as to the merits of the bill and copies of material papers.

Mr. John A. Tierney, budget officer, FSS-2, was an employee of the Department of State assigned to the Office of the High Commission for Germany at Bonn. Under the provisions of delegation of authority No. 56, the Office of the High Commission issued travel order No. H-1-3, September 2, 1952 authorizing Mr. Tierney's separation travel to his home in Helenwood, Tenn., via Washington for 5 days' consultation.

Following Mr. Tierney's arrival in Washington on October 5, 1952, his travel orders were amended to authorize 60 days' leave without pay effective October 11, 1952. However, when a need for his services developed in the Technical Cooperation Administration, his orders were again amended to place him on a temporary duty status effective October 27, 1952, for a period of 120 days. Mr. Tierney remained in this status until February 28, 1953. On March 2, 1953, he was reassigned as a departmental employee to Washington, D. C.

Mr. Tierney's reimbursement vouchers for per diem allowance at the rate of \$9 per day during the period October 27 to February 28, on which he was paid a total of \$1,116 by the Department, were disallowed by the General Accounting Office on the grounds that Mr. Tierney was not away from his post of assignment during this period because he, in effect, entered on duty in his departmental assignment on October 27, 1952 rather than on March 2, 1953. The General Accounting Office based its decision on the following factors:

(a) That Mr. Tierney's services at Bonn were terminated upon his departure and that his return to that point for further duty was not contemplated.

(b) That no other place was designated as a new or prospective station from which Mr. Tierney may have been considered absent on "temporary detail" until March 2, 1953.

(c) That the post of duty of an employee is required to be the place at which the employee expects and is expected to spend the greater part of his time.

(d) That Mr. Tierney's household goods were consigned to Washington, D. C. rather than the designated place of residence upon separation.

Although Mr. Tierney did terminate his services in Bonn, September 2, 1952, he did not end his duty status. The duty status of a Foreign Service employee returning to his home in the United States on separation orders is not terminated until he reaches his destination by the most direct and expeditious means of travel. Mr. Tierney's travel to his home was interrupted by his restoration to temporary duty in Washington and the termination of his limited appointment was later canceled, on March 2, 1953, by his assignment to a departmental position.

The fact that Mr. Tierney was later employed by TCA for duty in Washington, D. C., was coincidental rather than deliberate. The Technical Cooperation Administration was recruiting for budget officers throughout the world. There is no reason to believe that TCA would have requested a reimbursable detail of 120 days for Mr. Tierney if TCA had known in advance that Mr. Tierney's next assignment would be to a departmental position in Washington rather than to a position abroad.

The Department's records disclose that in the opinion of the Office of the High Commissioner for Germany and of the Department, Mr. Tierney was on temporary detail from Bonn, Germany, to Washington, D. C., from October 27 until March 2. He had not proceeded to his home for separation purposes as he was authorized to do by T. O. E-1-3, September 2, 1952, because the travel order had subsequently been amended to provide leave without pay and restoration to temporary duty status.

Although the Department's records do not reveal the reason for Mr. Tierney's having shipped his effects to Washington rather than to Helenwood, Tenn., Mr. Tierney stated, in his letter of July 1, 1957, to the General Accounting Office that although Mrs. Tierney proceeded to Helenwood, Tenn. shortly after his arrival in the United States from Germany and it was his intention to follow her there, he had his household effects shipped to Washington because, as a career civil servant, he intended to return to Washington from Helenwood to seek another position with the Government.

In view of the foregoing the Department recommends that Mr. Tierney be granted the relief proposed in H. R. 9109.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary
(For the Secretary of State.)

